

**STATE OF ILLINOIS
ILLINOIS COMMENCE COMMISSION
DOCKERT NO. 05-0345**

**REVISED DIRECT TESTIMONY OF MITCHELL BERG
ON BEHALF OF WOODLAWN UTILITIES CORPORATION**

1. Q. Please state your name and business address.
2. A. Mitchell Berg, Woodlawn Utilities Corporation ("Woodlawn"),
3. 3127 Wallin Avenue, Rockford, Illinois 61101.
4. Q. By whom are you employed and in what capacity?
5. A. I am the President of Woodlawn and Smith Ecological Systems, Inc.
6. Q. Please summarize your professional background?
7. A. I have 27 years of experience in the sales and service of pumps (All Types),
8. Aerators and chemical feed equipment. I have been president
9. of Smith Ecological Systems, Inc. for the past 20 years. I have been owner
- and President of Woodlawn Utility Corporation since August of 11 1996.
10. Q. Are you a member of any professional organizations?
11. A. Yes. American Water Works Association.
12. Q. Please describe your work experience?
13. A. I am responsible for purchasing all materials and the introduction of
14. new products and inventory controls for Smith Ecological Systems, Inc.
15. Q. As President of Woodlawn, what are your general duties?
16. A. My present responsibilities include the Administrative,
17. Secretarial/Clerical, Accounting, Human Resources and Revenues duties.
18. Q. Who is responsible for the everyday operations of Woodlawn?
19. A. The responsibility of the operations of Woodlawn falls under the

20. guidelines of M.G.D. Water Systems, Inc. M.G.D. Water Systems, Inc.
21. handles the everyday Operations, Monitoring, Engineering and
22. Compliance Sampling. M.G.D. Water systems' president is Mr. Michael
23. Megurdichian who also serves as Secretary of Woodlawn.

24. Q. Have you provided testimony before the Illinois Commerce
25. Commission ("Commission") in the past?

26. A. Yes. I have provided testimony before the Commission regarding
27. the approval of the purchase of Nordic Park water system.

28. Q. What is the purpose of your direct testimony in this proceeding?

29. A. The purpose of my direct testimony is to explain why Woodlawn is
30. requesting a certificate to provide water service in the area which is the
31. subject of the Petition filed in this docket. I will explain why granting the
32. certificate will allow Woodlawn to provide adequate, reliable and efficient
33. service to potential customers at the least cost. I will also describe the
34. Agreement between Woodlawn and Nordic Investment
35. Corporation (NIC) for the acquisition by Woodlawn of the proposed
36. water system to serve the area known as Sheridan Grove Subdivision for
37. which certification is requested. To the extent necessary, Woodlawn
38. requests approval of the portion of this agreement that deals with the
39. refunding of the backbone plant and, therefore, I will discuss the
40. reasons this agreement is in the best interest of Woodlawn, and the public.

41. Q. Please explain why Woodlawn is requesting a certificate to provide
42. water service in the area which is the subject of the Petition.

43. A. NIC owns the property serving the area for which Woodlawn is currently
44. requesting certification. In preparation for the 224 residential homes to be
45. constructed in Sheridan Grove Subdivision, NIC will construct

46. two (2) wells, two (2) hydropneumatic tanks having 14,000 gallons each,
47. a well house, along with water mains. Woodlawn has agreed to refund
48. the backbone plant from NIC. These facilities are adequate to provide
49. service to the residential development. Over the years, as the development
50. may progress over the 224 homes, additional facilities may be required
51. and they will be expanded or added as needed. At this time, however,
52. Woodlawn is not proposing any future water facilities.

53. Q. Are there any other public water systems providing service to the
54. Sheridan Grove Subdivision in question?

55. A. No other water utilities serve this area. Moreover, the Subdivision
56. for which certification is requested is located within the corporate
57. limits of the Village of New Milford. The Village of New Milford's
58. residents have individual well(s) to supply their water needs.

59. Q. Is the requested certification necessary, and will the public be
60. inconvenienced thereby?

61. A. Yes. Certification is necessary. A 224 residential development is planned
62. for the area and future property owners will soon be needing service to
63. this development. In fact construction of the water system commenced and
64. is now 75% complete. We expect the property owners will need water
65. service shortly after an IEPA operating permit has been granted.

66. Q. Will Woodlawn and it's affiliates be able to provide adequate, reliable and
67. efficient service to customers?

68. A. Yes. The proposed water facilities were designed by professional
69. engineers, and will be tested and inspected to meet all necessary
70. approvals. These facilities are sufficient to serve the subdivision for
71. which certification is requested. If the certificate is granted, Woodlawn

72. will provide reliable and efficient service through Sheridian Grove
73. Subdivision as it does in Woodlawn and Nordic Park service areas.

74. **Q.** Is certification of Woodlawn the least-cost means of satisfying the
75. service needs of customers to be located in the area for which
76. certification is sought?

77. **A.** Yes. Woodlawn's ownership and operation constitutes the least-cost
78. means of satisfying the service needs of the customers in the area. Indeed,
79. Woodlawn is virtually the only means of satisfying the service needs of
80. the area for which certification is being sought. Water facilities to serve
81. the area are currently being developed, and the owner of those facilities,
82. NIC, already has entered into an agreement to have these facilities refunded
83. by Woodlawn. Also, since the Village of New Milford does not have water
84. facilities to serve its residents, the most cost efficient means of service
85. would be for Woodlawn, who already has an agreement to refund the
86. facilities, to establish a service to the area. Additionally, the refund of
87. facilities (which is described later in my testimony) is structured in a way
88. which minimizes initial capital investments by Woodlawn and provides
89. for investment to occur based on revenue. Finally, the fact
90. that the Commission has jurisdiction over the rates and services provides
91. assurance that Woodlawn will provide adequate, reliable and efficient
92. service at the least cost.

93. **Q.** Is Woodlawn capable of efficiently managing and supervising the
94. activities necessary to serve all of the parcels?

95. **A.** Yes. Woodlawn does not directly employ any personal to operate the
96. facilities. However, Woodlawn has entered into affiliated agreements with
97. M.G.D. Water Systems, Inc. and Smith Ecological Systems, Inc. that

98. possess direct managerial and technical ability to provide service to the
99. area for which certification is requested. Woodlawn and its affiliates have
100. existing agreements, which the Commission approved in Docket
101. No. 98-0001, to provide service to Woodlawn and Nordic Park service
102. area.

103. **Q.** Is Woodlawn capable of financing the purchase of the facilities
104. without significant adverse financial consequences to the utility or its
105. future customers?

106. **A.** Yes. The agreement entered into with NIC varies from the Commission's
107. rules. It is important to note that NIC will be responsible for financing the
108. engineering and all necessary approvals needed to construct the water
109. facilities in the subdivision. Further, the agreement requires Woodlawn
110. to refund the monies back to NIC for the backbone water facilities.
111. Based on the agreement, Woodlawn will have invested
112. approximately \$380,000 of the \$1,000,000 estimated cost of the water
113. facilities. The agreement is entitled "Agreement" and was executed on
November 22, 2004. The Agreement was filed with the Petition as Exhibit A.

114. **Q.** Is the Agreement the result of arm's-length negotiations between
115. Woodlawn and NIC, and does it represents the best interests of both
116. parties?

117. **A.** Yes. Both parties voluntarily entered into this Agreement with each other
118. under terms that were mutually satisfying to each party. If the terms of the
119. Agreement were not satisfactory, either party could have elected to
120. abandon negotiations, or to negotiate with another party. The Agreement
121. was entered into in good faith and, in my opinion, is fair to both parties,
122. and produces results that are in the public interest and serve the public

123. convenience.
124. Q. What is the purchase price for the facilities?
125. A. Under the Agreement, Woodlawn pays no money down and will refund
126. NIC for the water backbone plant based on review in the amount of
127. approximately \$380,000. Backbone plant includes two new wells, well house,
128. and two storage tanks having 28,000 gallons combined storage and related
129. appurtenances. The amount of refund is described in the agreement.
130. Woodlawn will make these refunds for a period of ten years from the date
131. of the first customer connection. NIC will be responsible to the utility for
132. approximately \$620,000, which represents the mains, hydrants and
133. related appurtenances.
134. Q. What are the initial proposed water rates for Sheridan Grove Subdivision
135. and their impact on a customer?
136. A. Woodlawn proposes to establish the following initial rates for the Sheridan
137. Grove Subdivision. The proposed rates are as follows:
- | | |
|-------------------------|---------------------------|
| 138. ¾" Meter | \$13.00 monthly |
| 139. 1" Meter | \$ 17.00 monthly |
| 140. 1-1/2" Meter | \$ 25.00 monthly |
| 141. 2" Meter | \$ 30.00 monthly |
| 142. Gallonage Charges: | \$ 3.50 per 1,000 gallons |
143. Based on a consumption of 7,000 gallons per month, the customers' monthly
144. bill will be \$37.50. The consumption is based on an estimated usage
145. between Nordic Park and Woodlawn as an average. (5.33 TGPM
146. Woodlawn, 8.25 TGPM Nordic Woods).
147. Q. Are you familiar with 83 Illinois Administrative Code 600.370?
148. A. Yes, I am familiar with Section 600.370.

149. Q. Does the financial arrangement, under the Agreement, comply with
150. 83 Illinois Administrative Code 600.370?

151. A. Developers and customers requesting water service, which requires a main
152. extension, would be governed by 83 Illinois Administrative Code
153. 600, Section 600.370, Service to New Customers. This section outlines
154. the terms and conditions for the water main extension to be made by the
155. customer and a water company. The agreement between Woodlawn and
156. NIC partially complies with Part 600.370, that Woodlawn would refund
157. the monies for the backbone water facilities. However, the agreement
158. would alleviate Woodlawn from refunding the monies back to NIC for
159. the construction of the distribution system, therefore, does not comply
160. fully with Part 600.370. In my opinion, the agreement protects the
161. Company and the customers from a slow or even a failed development.

162. Q. Is Woodlawn requesting that Commission grant a variance from Part
163. 600.370?

164. A. Yes.

165. Q. In your opinion, would approval of the Agreement be in the best
166. interest of Woodlawn and its future ratepayers, and in the public
167. interest?

168. A. Yes. Woodlawn's ownership and the affiliated interest companies
169. operation and maintenance of the water facilities is necessary to provide
170. adequate, reliable and efficient water to customers to be located within the
171. area for which certification is sought. There will be no adverse impact on
172. Woodlawn nor its subsidiary company.

173. Q. Will Sheridan Grove Subdivision water facilities be merged with
174. Woodlawn or be another subsidiary company, similar to Nordic Park

175. **Water & Sewerage Disposal Company, Incorporated?**
176. A. **We plan to have Sheridan Grove Subdivision water facilities be an extension**
177. **of Woodlawn's service area, with the same rules, regulations and**
178. **conditions of service. Also, we plan to maintain separate accounting**
179. **books for this service area.**
180. Q. **Will you be using the depreciation rate as set forth for Woodlawn?**
181. A. **Yes**
182. Q. **Have you included a ten year income forecast?**
183. A. **Yes**
184. Q. **Does this conclude your testimony?**
185. A. **Yes.**

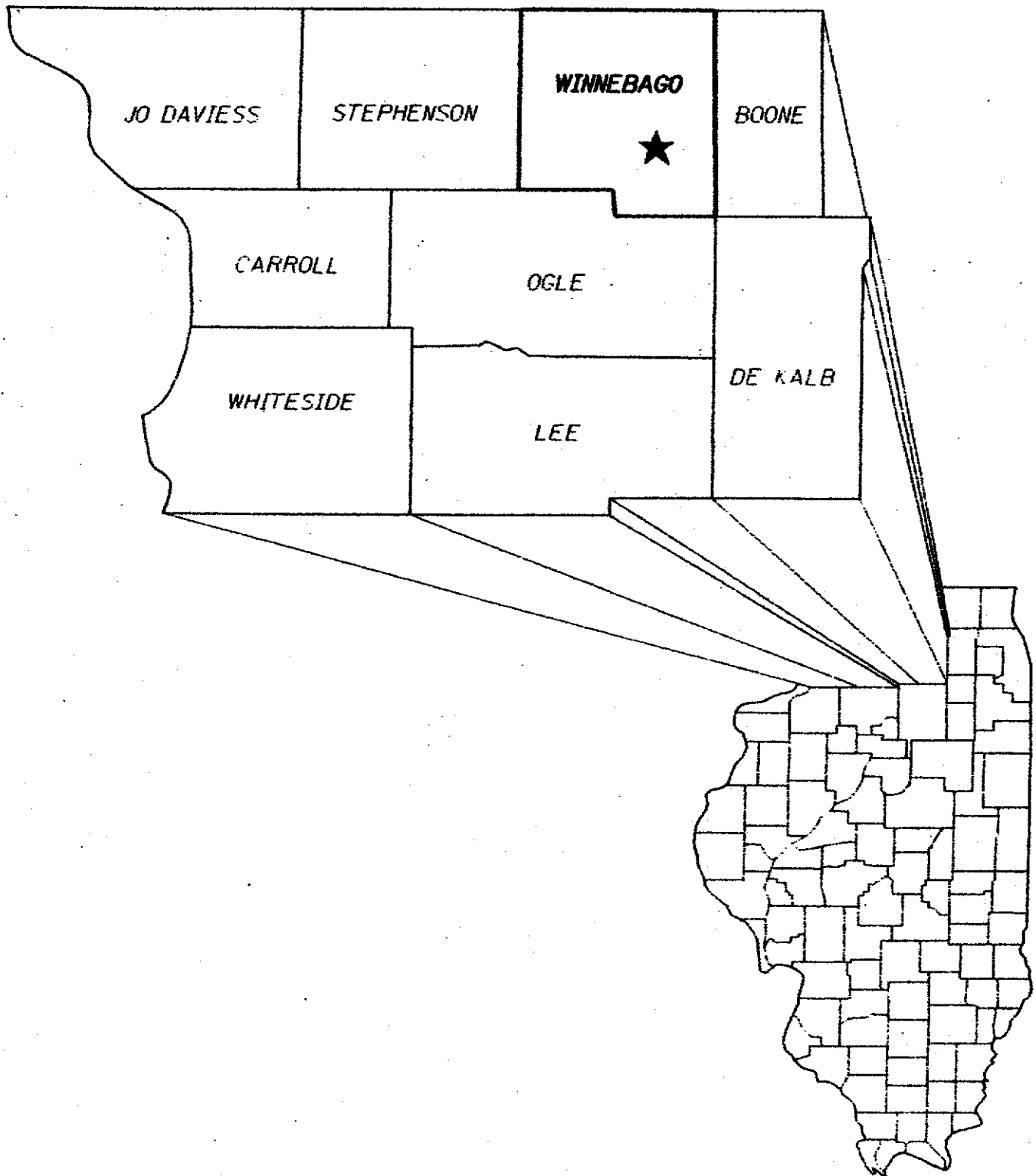
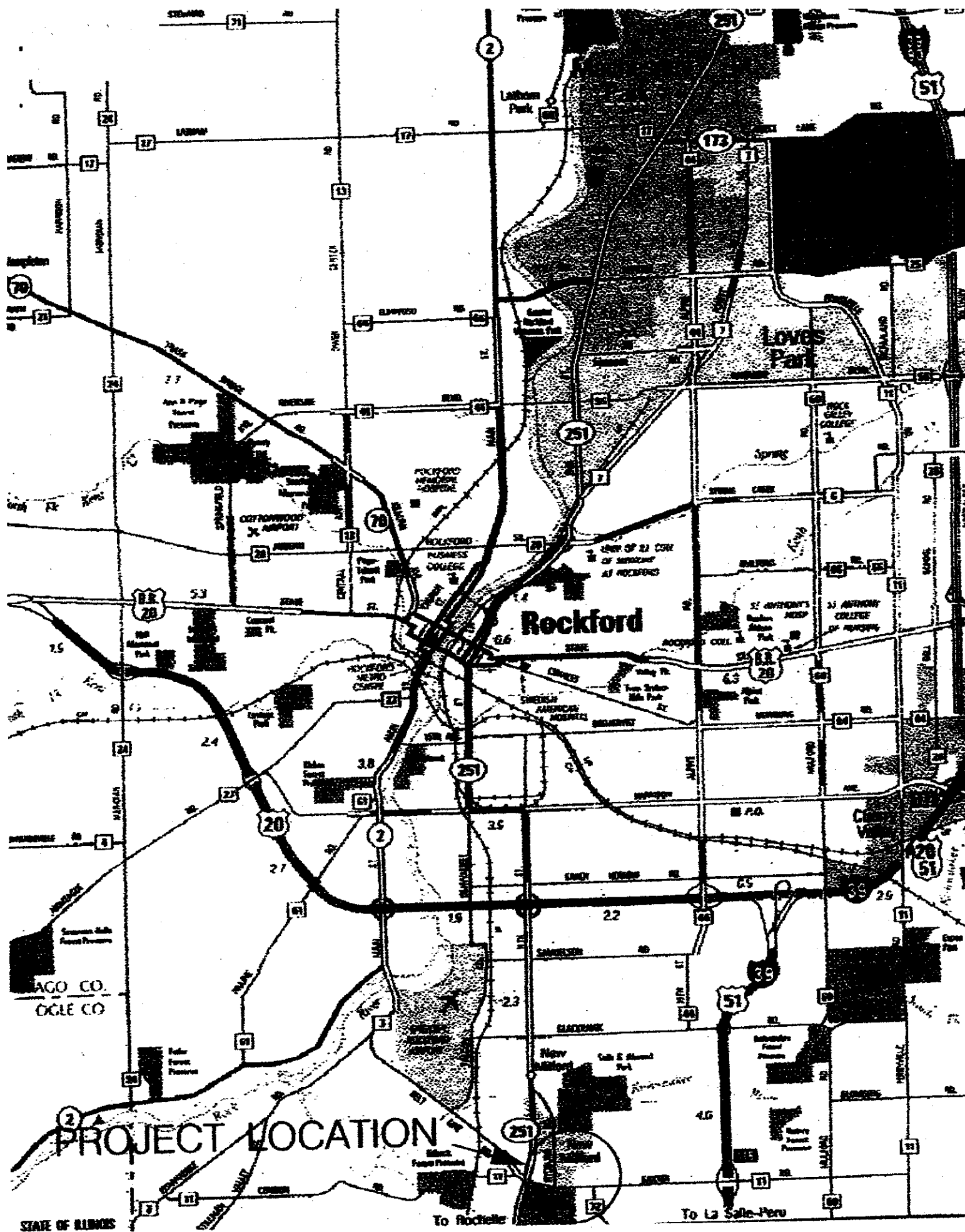
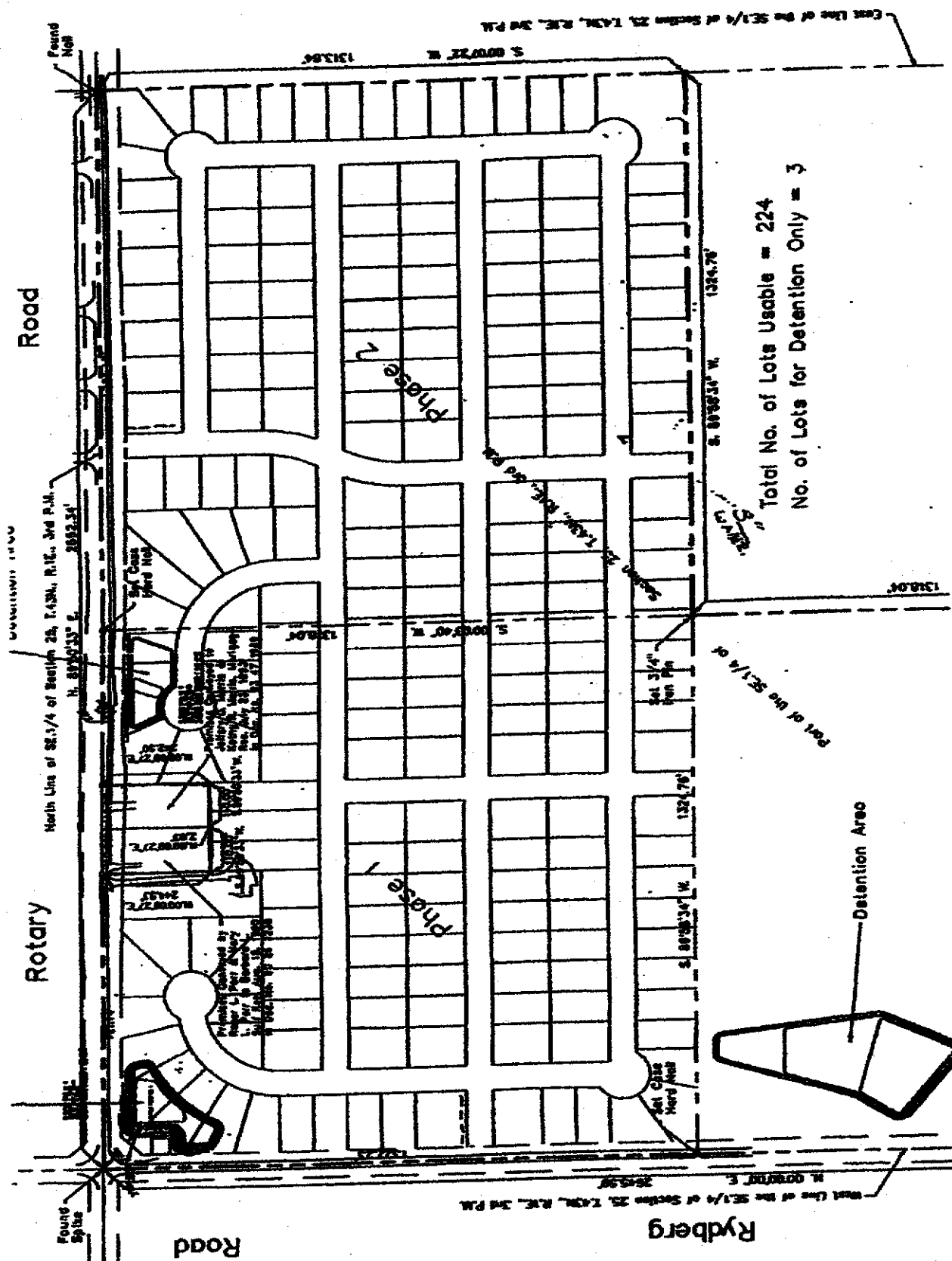


EXHIBIT A





LEGAL DESCRIPTION

The Northeast Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of Section 25, Township 43 North, Range 1 East of the Third Principal Meridian, Winnebago County, Illinois. Situated in the County of Winnebago and the State of Illinois. Containing 40.04 acres, more or less.

EXHIBIT B

RULES, REGULATIONS AND CONDITIONS OF SERVICE

WATER

Applies to the following Territories:

Woodlawn, Sheridan Grove

Issued	November	1	2002	Effective	January	1	2003
	Month	Day	Year		Month	Day	Year
Issued By	Mr. Mitchell Berg			President			
	Name of Officer			Title			
	3127 Wallin Ave. Rockford, IL 61101						
	Address of Officer						

Woodlawn Utilities Corporation

(Name of Company)

ILL. C. C. No. 1

1st

Sheet No. 1

Cancelling

Sheet No.

Applies To Sheridan Grove Subdivision, New Milford Illinois

(Name of City)

Water

SERVICE

Residential and Commercial Rates**General Water Service**

Available to any customer using water, furnished by a meter. The rate for general Service consist of a customer charge and a usage charge.

Customer Charge

The following customer charges, vary only with the size of the meter. The charge is to be paid regardless of the usage.

Size of Meter**Monthly Charge**

¾"

\$13.00 monthly

1"

\$17.00

1½"

\$25.00

2"

\$30.00

Usage Charge

In addition to the following foregoing customer charge, each customer served by the company shall pay the following, - \$3.50 per 1,000 gallons.

Issued

Month

Day

Year

Effective

Month

Day

Year

Issued By

Mitchell W. Berg

President

Name of Officer

Title

3127 Wallin Ave, Rockford, IL 61101

Address of Officer

DO NOT USE THIS MARGIN

AGREEMENT

THIS AGREEMENT made this 22 day of November, 2004, by and between WOODLAWN UTILITIES CORPORATION, an Illinois Corporation, (hereinafter referred to as "Buyer") and NORDIC INVESTMENT CORPORATION, an Illinois Corporation, (hereinafter referred to as "Seller").

WHEREAS, Seller has sold certain real estate located at the southeast corner of Rotary Road and Rydberg Road, located near New Milford, Winnebago County, Illinois (a legal description of which is attached hereto and made a part hereof as Exhibit "A") to Ryberg NM, LLC for the purposes of developing a residential subdivision, and

WHEREAS, the plat of the aforesaid proposed subdivision is attached hereto and made a part hereof as Exhibit "B", and

WHEREAS, Seller has agreed with Ryberg NM, LLC, that it will cause to be constructed in the Subdivision a water system for residential use, and

WHEREAS, Seller has agreed with Ryberg NM, LLC, that it plans on constructing the water system, including all underground pipes to reach each Lot in the Subdivision, and will purchase and install necessary equipment for the operation of the water system, and

WHEREAS, Seller does not wish to operate the water system itself, but desires to sell the system to the Buyer, and

WHEREAS, Buyer is experienced in owning and operating water systems and desires to purchase the system from Seller upon the terms and conditions set forth herein;

NOW, THEREFORE, the parties hereby agree as follows:

1. **Construction of System.** Seller has agreed that Ryberg NM, LLC, shall construct the distribution system in the aforesaid Subdivision, and it shall install all necessary pipes to the various Lots within the Subdivision, a copy of the Ryberg Agreement is attached hereto. Seller shall install two wells, construct one well house, and install all appropriate and necessary equipment for the operation of the water system (all of which is referred to herein as "Water System").

2. **Purchase Price.** Buyer shall purchase the aforesaid entire water system from Seller for an amount not to exceed Three Hundred Eighty Thousand Eight Hundred and 00/100 Dollars (\$380,800.00), payable out of the gross revenue received from the users of the water system. Payment shall be made annually at the following rates:

Year Ending December 31, 2005	Buyer shall pay Seller 10% of water revenue received during the Year 2005.
Year Ending December 31, 2006	Buyer shall pay Seller 30% of water revenue received during the Year 2006.
Year Ending December 31, 2007	Buyer shall pay Seller 50% of water revenue received during the Year 2007.

EXHIBIT C

Year Ending December 31, 2008	Buyer shall pay Seller 50% of water revenue received during the Year 2008.
Year Ending December 31, 2009	Buyer shall pay Seller 50% of water revenue received during the Year 2009.
Year Ending December 31, 2010	Buyer shall pay Seller 50% of water revenue received during the Year 2010.
Year Ending December 31, 2011	Buyer shall pay Seller 50% of water revenue received during the Year 2011.
Year Ending December 31, 2012	Buyer shall pay Seller 50% of water revenue received during the Year 2012.
Year Ending December 31, 2013	Buyer shall pay Seller 50% of water revenue received during the Year 2013.
Year Ending December 31, 2014	Buyer shall pay Seller 50% of water revenue received during the Year 2014.
Year Ending December 31, 2015	Buyer shall pay Seller 50% of water revenue received during the Year 2015.

Buyer shall pay Seller the aforesaid installment payment not later than January 20 for the preceding year, at which time Buyer shall deliver to Seller an accounting of such revenues received from the water system. Provided, however, the total amount of payment required shall not exceed \$380,800.00.

If total payments are less than Three Hundred Eighty Thousand Eight Hundred and 00/100 Dollars (\$380,800.00), then the difference between Three Hundred Eighty Thousand Eight Hundred and 00/100 Dollars (\$380,800.00) and the actual amount paid pursuant to this Agreement, shall be deemed aid to construction.

3. **Closing.** The time, place and manner of closing this transaction shall be as follows: The closing shall occur within 30 days of notice of approval of the sale by the Illinois Commerce Commission. It shall be held at the office of Buyer's attorney, or such other place as the parties may agree.

4. **Documents at Closing.** At time of closing, Seller shall deliver to Buyer a Warranty Deed to the real estate upon which the well houses are to be located, as identified on Exhibit "B" attached hereto, or such other parcels as the parties may mutually agree. Seller shall further deliver to Buyer the utility easements for access to the various Lots, as identified on the Plat attached hereto as Exhibit "B" or such other location as the parties may agree, together with all other easements as may be required to operate and maintain the system. Seller shall deliver to Buyer at time of closing a Bill of Sale for all water system equipment, wells, and piping necessary for operation of the water system. All transfers shall be by warranty deed or warranty bill of sale, free and clear of all liens and encumbrances.

5. **Warranty.** Seller warrants that the wells, pipe and equipment for the wells and well house facilities will be installed in a workmanlike manner, and free of defects as of the date of closing.

6. **Sellers Right to Sell to New Milford Prior to Closing.** Up to date of closing, Seller retains the right to sell the water system to the Village of New Milford (or any other qualified entity), in which case the Buyer under this Contract will waive any rights under this Contract, except it shall be paid for the services which it has rendered by operating the system in the interim, and shall receive five percent (5%) of the gross sale price of the water system to the Village of New Milford (or any other qualified entity), plus all expenses which Woodlawn Utilities Corporation has incurred by reason of this Agreement, which payment shall be made at the time of closing with the Village of New Milford (or any other qualified entity), but not later than six (6) months after the Illinois Commerce Commission has approved water rates for the Subdivision.

7. **Cooperation with ICC Application.** The parties acknowledge that Buyer is required to obtain Illinois Commerce Commission approval of its operation and rates for the water system (prior to closing). Seller will cooperate with the Buyer in obtaining such approval.

8. **Operation Before ICC Approval.** The parties recognize that homes may be built in the Subdivision prior to the Buyer obtaining Illinois Commerce Commission approval of its water rates. It is anticipated that after the Illinois Environmental Protection Agency has approved the water for the system, the system may be operated for the residences, but the water charges held in escrow until such time as Illinois Commerce Commission approval is obtained. Buyer agrees to operate the system during such interim basis, and at such time as the water charges held in escrow are released, the parties will treat the revenue as if it was earned during the first installment year of this Contract. If for whatever reason, Buyer operates the system, but this closing does not occur, Seller shall be compensated for its operation in an amount equal to the compensation which it currently receives from operation of the system located in the Nordic Woods Subdivision.

9. **Insurance.** In the event Buyer operates the system prior to closing, Seller agrees to provide liability insurance for the operation of the system, and shall name Woodlawn Utilities Corporation, Smith Ecological System, Inc. and MGD Water Systems, Inc. (all of whom may be involved in the operation of the system) as additionally named insured in an amount of insurance not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00).

10. **Documents.** Each party agrees to deliver such documents as may be reasonably required to carry out the provisions of this Agreement.

11. **Costs.** Each party shall pay its own costs and expenses incurred in connection with this Agreement, and the transactions referenced herein.

12. **No Brokers.** The parties represent that neither has an employee in the broker or other agent who would be entitled to any commission as a result of this sale/purchase.

13. **Inspection.** This Agreement is contingent upon the Buyer's satisfactory physical inspection of the water system prior to closing, and is further contingent upon Buyer obtaining approval of its water rates from the Illinois Commerce Commission prior to closing.

14. **Agreement Complete: Successors and Assigns.** This Agreement contains the entire understanding between the parties hereto with respect to the transactions contemplated hereby; all prior negotiations and agreements between the parties are superseded by this Agreement; and there are no representations, warranties, understanding or agreements other than those expressly set forth herein, except as modified in writing concurrently herewith or subsequent hereto, which writing shall be executed by Seller and Buyer respectively. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15. **Consent.** Neither party shall assign its rights and/or obligations hereunder without the prior written consent of the other party to this Agreement.

16. **Captions.** The descriptive headings of the various paragraphs of this Agreement are for convenience only and shall not be used to construe or interpret the meaning of any of the provisions hereof.

17. **Exhibits and Schedules.** If any Exhibit or Schedule recited to be attached is not so attached at the time of the execution hereof, the same shall be prepared after the execution of this Agreement; and upon approval evidenced by notation of such Exhibit or Schedule by a representative of each party to this Agreement, each Exhibit or Schedule shall become a part of this Agreement.

18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

19. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

20. **Environmental, Health & Safety Matters.**

(a) Seller warrants to the best of his knowledge, the Corporation has complied with all provisions of federal, state and local environmental, health and safety laws, codes and ordinances and rules and regulations promulgated thereby.

(b) There are no underground storage tanks on the property conveyed in this transaction, excepting one water tank used for water storage only.

(c) Seller has received no notice of, and neither knows nor suspects, any fact which might constitute violation of any federal, state, or local environmental, health or safety laws, codes or ordinances, and any rules and regulations promulgated thereunder that relate to the history, use, ownership, or occupancy of any land subject to this transaction, including any violation of any covenants, conditions, easements, rights-of-way, or restrictions, excepting the public notices attached hereto.

(d) To the best of Seller's knowledge, there has been no complaint, order, directive, claim, citation, request for information, or notice by any governmental authority or any other person or entity to the corporation with respect to violation of any governmental law or regulation.

(e) To the best of Seller's knowledge, there are no PCB containing materials located at or on the property subject to this transaction.

(f) The Corporation has been issued, and shall maintain until closing date, all required federal, state and local permits, licenses, certificates and approvals relating to the Corporation's business. A complete copy of all such permits, licenses, certificates and approvals will be provided to Buyer within ten (10) days hereof upon request.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed all effective as of the day and year first above written.

BUYER:

Mitchell Bergman

SELLER:

Jill Gnesda, Treasurer

PREPARED BY:

STEPHEN G. BALSLEY
BARRICK, SWITZER, LONG,
BALSLEY & VAN EVERA
One Madison Street
Rockford, IL 61104
(815) 962-6611

Sheridan Grove Subdivision Ten Year Income Forecast

Year Ending	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Number of Initial Customers	0	45	107	172	215	219	219	219	219	219
Number of New Customers	45	62	65	43	4	0	0	0	0	0
Number of Total Customers	45	107	172	215	219	219	219	219	219	219
Usage in Thousand Gallons	1890	6384	11718	16254	18228	18396	18396	18396	18396	18396
Gross Revenue	10125	34200	62775	87075	97650	98550	98550	98550	98550	98550
Total Expenses	13504	33330	59702	78215	81675	85775	85775	85775	85775	85775
Depreciation	8091	8768	9478	9948	9991	9991	9991	9991	9991	9991
Taxes Other	1516	1519	1522	1509	1472	1432	1392	1352	1312	1271
State, Federal Tax	-760	196	691	1994	3594	2874	2874	2874	2874	2874
Total Other Expenses	8847	10483	11691	13451	15057	14297	14257	14217	14177	14136
Income	-12226	-9613	-8618	-4591	918	-1522	-1482	-1442	-1402	-1361
Accumulated Depreciation	8091	16859	26337	36285	46276	56267	66258	76249	86240	96231
Rate Base	378929	379883	380495	377255	367888	357897	347906	337915	327924	317933
Rate of Return	-3.2%	-2.5%	-2.3%	-1.2%	.2%	-.4%	-.4%	-.4%	-.4%	-.4%